



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

MARY ANN WRIGHT
Acting Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

April 20, 2005

CERTIFIED RETURN RECEIPT
7002 0510 0003 8603 3530

Mr. Mark Miller
Expectations
10116 South Wasatch Boulevard
Sandy, Utah 84094

Subject: Reassessment, Expectations Unpermitted Site, Cessation Order MC-2005-03-03-01, M/035/024, Salt Lake County, Utah

Dear Mr. Miller:

The proposed civil penalty assessment for the above referenced cessation order was sent to you on April 4, 2005. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts which were not reasonably available on the date of the issuance of the proposed assessment. Following is the reassessment of the penalty for the cessation order:

- MC-05-03-03-01- Violation 1 of 1 \$440

The enclosed worksheet specifically outlines how the violation was assessed.

Under R647-7-106, there are two informal appeal options available to you:

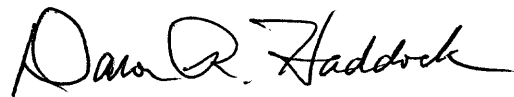
1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a

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review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Penny Berry.

Sincerely,



Daron R. Haddock
Assessment Officer

DRH:jb
Enclosure: Worksheet
cc: Vicki Bailey, DOGM
Penny Berry, DOGM
O:\M035-SaltLake\S0350024-Expectations\non-compliance\REAssessmentCO.doc

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Mark Miller/Expectations PERMIT M/035/024
NOV / CO # MC-05-03-03-01 VIOLATION 1 of 1

ASSESSMENT DATE April 20, 2005

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

Mining without appropriate approvals/ Loss of reclamation potential

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. A number of acres have been disturbed at this location without having obtained a permit to do so. Rock and mineral material has been excavated from the site using mechanized equipment and some rock has been hauled from the site. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 7

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that a trackhoe was digging in a hole about 5-10 feet deep and was excavating large rocks which are used in the operator's landscaping business. Much (though not all) of the vegetation has been removed in these areas, and there are a lot of rocks on the surface. The soil has been disturbed and may have been mixed with subsoil materials. **Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed. There is potential for sediment to leave the site, but no evidence of impacts off the site was directly observed.** Further discussion with the inspector revealed that the damage is probably temporary and the site should be reclaimable, although because the topsoil was not salvaged, there may be some loss of reclamation potential. Topography of the site has not been changed significantly, but some clean-up of rocks will be needed. While the disturbed area is fairly large, damage is considered minor and points are assigned in the lower third of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 27

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that the operator was not aware of the need for a permit from DOGM for this operation. He did not realize that removing the landscape rock would be considered to be a mining operation. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to obtain a permit prior to conducting mining operations. No contact was made to the Division, to verify the need for a permit. Once the requirements were explained to the Operator, he was very cooperative and expressed the desire to achieve compliance. The Operator was considered negligent primarily out of ignorance and the confusion about what constitutes mining operations, thus the assignment of points in the lower third of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)

- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS -12

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement for this violation is considered difficult because it required plans to be submitted and a map to be drawn. The operator achieved rapid compliance inasmuch as he supplied the required information by April 6th, 2005, which was 20 days from the date the violation was issued and the abatement actually allowed 30 days. While not abated in the first half of the abatement period, rapid compliance is considered the appropriate category because of the difficulty in providing maps and plans. Twelve good faith points are awarded.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-05-03-03-01</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>27</u>
III. TOTAL NEGLIGENCE POINTS	<u>5</u>
IV. TOTAL GOOD FAITH POINTS	<u>-12</u>
TOTAL ASSESSED POINTS	<u>20</u>
TOTAL ASSESSED FINE	<u>\$ 440</u>